

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BALTAZAR REYES GARCIA,
HECTOR CONTRERAS IBARRA,
ANGEL SERRANO CARRENO,

Defendants.

NO. CR16-287 JLR

UNITED STATES' TRIAL BRIEF

The United States, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Steven T. Masada and S. Kate Vaughan, Assistant United States Attorneys for said District, respectfully submits this trial brief. Trial is set to commence September 28, 2017.

I. INTRODUCTION – THE CHARGES.

This case originally charged 17 defendants. As of this date, only three of these Defendants, Baltazar Reyes Garcia, Hector Contreras Ibarra, and Angel Serrano Carreno remain set for trial, with all other defendants having pled guilty.

1 The charges in this case fall into three categories. First, all three defendants are
2 charged jointly in Count 1, which alleges a *Conspiracy to Distribute Controlled*
3 *Substances* (cocaine, methamphetamine and heroin). All three defendants are alleged to
4 have agreed with others to distribute these controlled substances in an amount
5 foreseeably exceeding the 841(b)(1)(A) threshold amounts.

6 The second category of charges, Counts 5, 6, and 9, are based on the covert
7 investigation conducted by law enforcement. All allege *Distribution of a Controlled*
8 *Substance*. Each of these counts is charged as a violation of 21 U.S.C. § 841(a)(1),
9 841(b)(1)(A) and Title 18, United States Code, Section 2, given the drug quantities
10 involved.

11 The third category of charges relate to items seized during arrests and various
12 search warrants. Specifically, Defendant Serrano is charged with substantive counts
13 related to items recovered during the search of his respective residences. Defendant
14 Serrano is charged in two counts arising from the search of his residence at 15072
15 Nookachamps Road, Mount Vernon on November 2, 2016. He is charged in Count 35
16 with *Possession with Intent to Distribute* heroin, and in Count 36 with Unlawful
17 Possession of Ammunition by a Prohibited Person (felon). Defendant Serrano is also
18 charged in Count 41 with *Possession with Intent to Distribute* heroin arising from the
19 search of his post-release residence at 807 S 27th Street, Mount Vernon, Washington on
20 November 22, 2016. Both of the drug counts stemming from residential searches are
21 charged at the 841(b)(1)(C) level.

22 The government tentatively estimates that its case-in-chief will last approximately
23 ten trial days, depending of course on the length and scope of cross-examination, on
24 length and nature of the defenses' case and need for rebuttal, and on how much the use of
25 translators slow the proceedings. The United States tentatively anticipates calling
26 approximately 35 witnesses and introducing approximately 450 exhibits (the majority of
27 which are photographs, videos, and recordings, which may be admitted in bulk).

1 AUSA S. Kate Vaughan will conduct *voir dire* and will give the closing argument.
2 AUSA Steven T. Masada will give the opening statement and rebuttal argument.

3 II. FACTUAL SUMMARY

4 The Court is by now familiar with the background of this case from prior hearings
5 and the various pretrial motions. Defendants Baltazar Reyes Garcia and Hector
6 Contreras Ibarra were partners who supplied the Eric Marquez and Hector Hugo Garcia
7 Gutierrez's distribution operation with narcotics. Defendant Serrano was a drug
8 redistributor who, with others, obtained the drugs from Reyes Garcia and Hector
9 Contreras Ibarra. Defendant Serrano also maintained a stash house where the drugs
10 obtained from Baltazar Reyes Garcia and Hector Contreras Ibarra were stored and
11 processed. The government anticipates the evidence will show the following.

12 A. Controlled Buys and Surveillance

13 In late 2015, a Federal Bureau of Investigation (FBI) Task Force was investigating
14 the drug trafficking activities of a multi-pound trafficker, Alfredo Jurado Sanchez, and
15 his associates. Sanchez was a known associate of, and, based on toll data, in frequent
16 contact with, defendant Baltazar Reyes-Garcia, an individual known to local law
17 enforcement for suspected ties to narcotics activity.

18 On September 18, 2015, authorities conducted a traffic stop on a Jeep Cherokee
19 driven by Sanchez based on information that he was transporting drugs. Investigators
20 discovered approximately six pounds of methamphetamine concealed in a hidden
21 compartment in the Jeep.¹ The drugs were analyzed and found to contain fingerprints of
22 co-defendant Hector Hugo Garcia Gutierrez. According to pen register and toll data on
23 Sanchez's phone, in the days leading up to the seizure, between September 3 and
24 September 11, 2015, there were 24 calls and texts between Sanchez and Target
25 Telephone (TT1), subscribed to Reyes-Garcia.

26
27
28 ¹ Sanchez was arrested, charged and ultimately sentenced on federal drug charges.
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1 In December 2015, the FBI Task Force learned of a parallel investigation targeting
2 similar suspects, namely, Reyes-Garcia, and his associates, Hector Contreras Ibarra and
3 his father, Jorge Contreras. Investigators acquired significant information and were able
4 to conduct three controlled purchases of methamphetamine through an individual
5 cooperating with authorities (CS3). Each transaction involved 1580 E. Selah Road,
6 Yakima, Washington ("Yakima Residence"), the residence of Jorge Contreras.

7 On December 4, 2015, CS3, after meeting with investigators and following the
8 standard protocols, drove to the Yakima Residence under surveillance and purchased
9 about 27.9 gross grams (gg) of methamphetamine. According to statements made by
10 CS3 just after the transaction, he/she acquired the drugs from Contreras Ibarra in
11 exchange for the prerecorded buy money.

12 In mid-December 2015, CS3 provided investigators with a description and license
13 plate of a vehicle CS3 believed belonged to Contreras Ibarra's drug source, a Mercedes
14 with Washington plate AVT1244 ("Reyes-Garcia Mercedes"), at the Yakima Residence.
15 According to the Washington Department of Licensing (DOL), that Mercedes was
16 registered to Baltazar Reyes-Garcia. CS3 was shown Reyes-Garcia's DOL photograph
17 (with descriptors removed) and identified Reyes-Garcia as the source driving the Reyes-
18 Garcia Mercedes. Surveillance later observed Reyes-Garcia driving this vehicle as well.

19 On January 7, 2016, CS3 conducted a second controlled purchase of
20 methamphetamine, this time from Jorge Contreras. After the details were arranged by
21 telephone, surveillance observed a vehicle depart the Yakima Residence and drive to the
22 meet location, where CS3 entered the vehicle and conducted the transaction. Thereafter,
23 the vehicle returned to the Yakima Residence. CS3 met with investigators, provided the
24 purchased 26.2 gg of meth, and confirmed the transaction was with Jorge Contreras.

25 On January 14, 2016, CS3 conducted a third controlled purchase of
26 methamphetamine, again from Jorge Contreras. As before, after the deal was set,
27 surveillance observed a vehicle depart the Yakima Residence and drive to the

1 prearranged meet location. After conducting the transaction with CS3, the vehicle later
2 returned to the Yakima Residence.

3 The government expects a confidential source (CS3) to testify regarding additional
4 information about Reyes-Garcia and the Contrerases. CS3 used to transport drugs and
5 money for Contreras Ibarra and Jorge Contreras and otherwise assisted in their criminal
6 activity and knew Reyes-Garcia, whom he knew as “Balta,” was the “boss.” CS3
7 observed pound quantities of drugs that were stored at the Yakima Residence, and knew
8 that Reyes-Garcia used vehicles with hidden compartments to transport drugs and money.
9 CS3 drove with Contreras Ibarra from Yakima to Seattle to deliver drugs and money to
10 Reyes Garcia, who lived in a residence north of Seattle near Tulalip Casino. CS3 further
11 assisted Contreras Ibarra process pound quantities of methamphetamine at the Yakima
12 Residence.

13 In February 2016, based on information gained from the investigations, FBI
14 obtained a tracking warrant for Reyes-Garcia’s phone, TT1. GPS location data for TT1
15 indicated that Reyes-Garcia was residing in Camano Island, within the Western District
16 of Washington, but also making various trips elsewhere, to include back and forth to
17 Eastern Washington.

18 For instance, on March 2, 2016, GPS location data showed TT1 traveling east on
19 Interstate 90. Later that afternoon, investigators observed the Reyes-Garcia Mercedes
20 parked at the Yakima Residence. Physical surveillance later observed Reyes-Garcia and
21 Contreras Ibarra depart a hotel in Yakima in the Reyes-Garcia Mercedes. According to
22 hotel records, Hector Contreras Ibarra had rented a room for two adults and listed a
23 residential address of 1462 E. S. Camino Dr., Camano Island, WA.² Per TT1 location
24 data, Reyes-Garcia and Contreras Ibarra returned to Camano Island that same evening.

25 In April 2016, Garcia Gutierrez, Reyes-Garcia, and Contreras Ibarra were
26

27 ² Investigators later confirmed that Reyes-Garcia and Contreras Ibarra in fact resided at 1462 SE Camano Drive,
28 Camano Island, Washington.

1 identified in an ongoing joint investigation conducted by FBI and the Drug Enforcement
2 Administration (DEA) in Western Washington. On May 11, 2016, investigators obtained
3 court authorization to continue tracking the Reyes-Garcia Mercedes.

4 In March 2016, through a cooperating source (CS1), investigators had identified
5 co-defendant Eric Marquez as a drug distributor residing in and around Skagit County,
6 Washington. Beginning in early April 2016, through CS1, investigators conducted
7 multiple controlled purchases of various drugs from Marquez and quickly identified his
8 drug partner and roommate as Garcia Gutierrez and their primary drug source at the time
9 as Reyes-Garcia and Contreras Ibarra. Investigators later introduced an undercover law
10 enforcement officer (UC1) to Marquez and Garcia Gutierrez who further infiltrated the
11 distribution network.

12 On April 5, 2016, CS1 met with Marquez in order to arrange the purchase of
13 heroin. Marquez told CS1 that he would have the heroin in a couple days and instructed
14 CS1 to contact him then. Two days later, on April 7, 2016, investigators met with CS1
15 and instructed CS1 to contact Marquez. Marquez agreed to meet CS1 at the Splash and
16 Dash carwash and during their meeting sold CS1 approximately one ounce of heroin.
17 After the meeting with CS1, investigators continued to follow Marquez who was driving
18 a Subaru Impreza. After briefly stopping at a residence in Mount Vernon, Marquez drove
19 to an AutoZone, where he met with co-defendants Angel Serrano Carreno, Hector Hugo
20 Garcia Gutierrez and Leopoldo Savalza Vela. Investigators observed all four individuals
21 walk into AutoZone and then return to the parking lot approximately ten minutes later.
22 Marquez and Savalza Vela got into the Subaru Impreza, Garcia Gutierrez got into a
23 Chevy Monte Carlo, and Serrano got onto a red motorcycle. Investigators followed all
24 three vehicles as they drove in tandem a residence on Nookachamps Road. At the
25 residence, Garcia Gutierrez parked the Chevy Monte Carlo and got into the Subaru
26 Impreza with Marquez and Savalza Vela. The Subaru then drove, still in tandem with the
27 red motorcycle driven by Serrano, to Marquez's and Garcia Gutierrez's shared residence

1 located at 20341 Stackpole Road, Mount Vernon, Washington (hereinafter “Stackpole
2 Residence”).

3 On April 14, 2016, CS1 met with Marquez at the splash and dash carwash to
4 discuss the purchase of methamphetamine. Marquez quoted a price of \$5,000 per pound,
5 and told CS1 that he sourced methamphetamine through his roommate (Garcia
6 Gutierrez). On April 19, 2016, CS1 conducted a controlled purchase of over a pound of
7 methamphetamine, which, the evidence shows, was supplied by Reyes-Garcia and
8 Contreras Ibarra. More specifically, Eric Marquez met CS1 at a carwash in Mount
9 Vernon, Washington in anticipation of a one-pound methamphetamine deal. Driving
10 Marquez’s truck, Garcia Gutierrez, Serrano and Savalza Vela then brought Marquez and
11 CS1 a sample amount (about 31.2 gross grams (gg)) from a nearby motel. After CS1
12 departed and later indicated the sample was acceptable, Marquez, Garcia Gutierrez,
13 Serrano and Savalza Vela met with their drug source, Reyes-Garcia and Contreras Ibarra,
14 in a restaurant parking lot. The entire group then drove to Reyes-Garcia’s and Contreras
15 Ibarra’s residence, 1462 SE Camano Drive, Camano Island, Washington (“Camano
16 Residence”), where they acquired the pound of methamphetamine. Marquez, Garcia
17 Gutierrez, Serrano, and Savalza Vela then returned to the same carwash, where Marquez
18 delivered the methamphetamine (about 498 gg) to CS1 in exchange for \$5,000. This
19 conduct is charged in Count 5 with respect to all three Defendants.

20 On May 11, 2016, GPS location data for Reyes-Garcia’s phone, TT4, revealed that
21 Reyes Garcia was located in the area of 15072 Nookachamps Road. Investigators
22 responded to the area in order to conduct surveillance on Reyes Garcia. By the time
23 investigators arrived in Mount Vernon, GPS location data for TT4 showed that Reyes
24 Garcia’s phone was located at Taqueria La Bamba, 2222 Riverside Drive, Mount Vernon,
25 Washington. Investigators established surveillance and observed Reyes Garcia,
26 Contreras Ibarra, Marquez, Garcia Gutierrez, and Savalza Vela walk out of Taqueria La
27 Bamba. The individuals talked for a couple of minutes and then Marquez, Garcia

1 Gutierrez, and Savalza Vela got into a gray BMW and drove away from the area.
2 Investigators observed Contreras Ibarra and Reyes Garcia get into a Cadillac CTS and
3 drive away from the area. Investigators followed Reyes Garcia and Contreras Ibarra as
4 they drove directly to the Camano Residence, where they were greeted by an unknown
5 Hispanic male who was standing in the driveway. Investigators observed Reyes Garcia
6 load two travel bags and a cardboard box into the trunk of a Chrysler 300, which was
7 parked behind a tree in the driveway. At approximately 3:52 p.m., investigators observed
8 the Chrysler 300 depart the residence. GPS location data for Reyes Garcia's phone, TT4,
9 indicated that Reyes Garcia was traveling in the Chrysler 300. GPS location data for
10 Reyes Garcia's phone, TT4, on May 12 and May 13, 2016, indicated that Reyes Garcia
11 had traveled to California. Notably, Reyes-Garcia subsequently met with Marquez on
12 May 21, 2016, at the Stackpole Residence, to collect money presumably for an additional
13 drug shipment.

14 On May 23, 2016, CS1 purchased a further pound of methamphetamine from the
15 Marquez DTO, in a deal involving the Nookachamps Residence. Agents were
16 conducting surveillance on Marquez and observed him leave his Stackpole residence and
17 drive together with Savalza Vela in the Subaru Impreza to the Nookachamps Residence.
18 They parked under the carport of the Nookachamps Residence for approximately a
19 minute, and then left and returned to Marquez's Stackpole residence. Marquez and
20 Savalza Vela remained there for a short period and then returned again in the Subaru
21 Impreza to Nookchamps Road. On their way there, Marquez called CS1 and asked if he
22 had the "papers", a known code for money. CS1 confirmed, and Marquez and CS1
23 agreed on a location for the drug deal. Marquez and Savalza Vela then parked in the
24 driveway of the 15082 Nookachamps Road, the house adjacent to the Nookachamps
25 Residence (trailer) and met with Contreras Ibarra, who had been observed leaving his
26 Camano Island Residence earlier that afternoon. Marquez obtained the
27 methamphetamine from the trunk of Contreras Ibarra's Jeep Liberty, and then left in the

1 Subaru Impreza with Savalza Vela. Marquez and Savalza Vela drove directly to meet
2 with CS1 where they delivered approximately a pound of methamphetamine (about 662
3 gg) in exchange for \$2,500. On June 8, 2016, CS1 paid Marquez another \$2,500
4 payment for this methamphetamine delivery. This conduct is charged in Count 6 with
5 respect to Defendants Reyes Garcia and Contreras Ibarra.

6 On June 22, 2016, Serrano was observed conducting a drug transaction.
7 Investigators were conducting surveillance on DTO members when they observed
8 Serrano driving a black Lexus sedan. Investigators followed Serrano and immediately
9 became suspicious as Serrano began driving in circular patterns throughout Mount
10 Vernon, Washington. On multiple occasions investigators nearly lost surveillance on
11 Serrano as he drove from one end of Mount Vernon to the other, making nonsensical
12 turns through neighborhoods and commercial areas. Ultimately, Serrano returned to the
13 same neighborhood where investigators originally started following him and pulled into
14 an apartment complex. There investigators watched as the driver of a Suzuki Areo, later
15 identified as Jimenez Soto, got into Serrano's Lexus. Moments later Jimenez Soto got
16 out of Serrano's Lexus, returned to the Suzuki Aero, and drove away from the area.

17 Investigators followed Jimenez Soto to Skagit Valley Mobile Manor, 1400 N. 30th
18 Street, Trailer #70, Mount Vernon, Washington. There, investigators arranged for a
19 Mount Vernon Police Officer to make contact with Jimenez Soto and his passenger,
20 identified as Espinoza, while they were parked in the driveway of Trailer #70. The
21 Mount Vernon Police Officer later searched the Suzuki Areo and located a bag
22 containing two balls of methamphetamine (about 25 grams), as confirmed by lab testing.
23 Based on the circumstances, investigators believed that the meeting between Serrano and
24 Jimenez Soto related to the delivery of drugs.

25 On June 28, 2016, Garcia Gutierrez, Reyes Garcia, and Contreras Ibarra
26 participated in another sizeable delivery of methamphetamine to UC1. More specifically,
27 Garcia Gutierrez and Marquez met with UC1 in a parked car in Mount Vernon in

1 anticipation of a one-pound delivery. During that meeting, which was recorded, they
2 informed UC1 that another co-defendant (Savalza Vela) had taken the remaining meth on
3 hand, but they had more arriving shortly from Yakima. In UC1's presence, Garcia
4 Gutierrez called a source who confirmed that the meth was en route from Yakima. UC1
5 agreed to meet later when the drugs arrived.

6 Thereafter, Marquez, Garcia Gutierrez and another co-defendant met Reyes-
7 Garcia before traveling to a restaurant in Stanwood where they met the load vehicle,
8 driven by Contreras Ibarra's wife. Reyes-Garcia removed a package (drugs) from the
9 load vehicle and placed it in the trunk of Garcia Gutierrez's car. Garcia Gutierrez and the
10 others then drove to the Nookachamps Residence, which was used to stash and process
11 drugs, where he brings a package from the trunk into the trailer. Shortly thereafter,
12 Garcia Gutierrez and two other co-defendants departed and delivered the pound of meth
13 to UC1 at a prearranged meet location. Investigators later reviewed video footage from a
14 pole cam installed at the Yakima Residence, Reyes-Garcia and Contreras Ibarra's stash
15 location (and the same location involved in CS3's controlled buys and prior surveillance).
16 Earlier that same day, the aforementioned load vehicle arrived and was loaded with
17 numerous items before departing and meeting with Reyes-Garcia and Garcia Gutierrez in
18 Stanwood. This conduct is charged in Count 9 with respect to Defendants Reyes Garcia
19 and Contreras Ibarra.

20 On July 8, 2016, Marquez and UC1 met at a restaurant and discussed the prospect
21 of UC1 smuggling drugs into Canada. During that recorded meeting, Marquez stated,
22 among other things, that his associates already transported drugs to Washington from
23 Mexico ("down there") and smuggled proceeds back into the United States from Canada.
24 Marquez discussed UC1 possibly smuggling a small test load for the operation.
25 Immediately after the meeting with UC1, Marquez met with Reyes-Garcia at a nearby gas
26 station.

27 During the course of this investigation, Reyes-Garcia and Contreras Ibarra moved

1 out of the Camano Residence and thereafter changed their behavior after becoming wary
2 of law enforcement's investigation. In mid-July 2016, surveillance units were following
3 Reyes-Garcia and two associates. Their vehicle engaged in several evasive maneuvers
4 and, while surveillance was momentarily lost, Reyes-Garcia apparently fled from the
5 vehicle on foot. A cooperating witness later told investigators of a recent incident where
6 Reyes-Garcia believed DEA was following him and escaped by hiding in a bush.

7 **B. The Wiretap Investigation**

8 Investigators sought and obtained Title III wiretap authorizations for various
9 phones, which substantially advanced the investigation and assisted in identifying and
10 ultimately arresting numerous previously unidentified members of the trafficking
11 organization. The government will offer some evidence related to the ongoing drug
12 trafficking conspiracy.

13 The wiretaps also confirmed that Reyes-Garcia and Contreras Ibarra continued to
14 supply drugs to the co-conspirators. For instance, in October 2016, investigators
15 intercepted calls of Garcia Gutierrez and Marquez discussing that a co-defendant was the
16 subject of threats by an individual referred to as "Balta" and "El Ena" (Reyes-Garcia³)
17 over an outstanding drug debt. In a call on October 3, 2016, Garcia Gutierrez told
18 Marquez that "El Ena" had called him with "real threats" and was looking for this
19 particular co-defendant in order to "cause a little pain, so they get it together."
20 Subsequent intercepted communications confirmed that this co-defendant was aware that
21 people were looking for him and trying to avoid them. When that co-defendant was later
22 arrested, he told investigators, among other things, that he owed Reyes-Garcia about
23 \$15,000 for fronted cocaine that had been stolen. The co-defendant further stated that,
24 approximately a month prior, "Hector" (Contreras Ibarra) and a man he believed to be
25

26
27 ³ Reyes-Garcia is referred to as "Enano" and similar nicknames.

1 Reyes-Garcia's brother came to his residence and threatened to "torture" him over the
2 debt. The co-defendant said he paid Contreras Ibarra some money but had not yet fully
3 paid Reyes-Garcia. Further, on October 13, 2016, Reyes Garcia called and texted Garcia
4 Gutierrez asking for Garcia Gutierrez to call him.

5 **C. Residential Searches**

6 On November 2, 2016, investigators conducted multiple arrests and searches of
7 numerous locations and vehicles in the Western and Eastern Districts of Washington as
8 part of a coordinated takedown operation. In total, they seized multiple additional
9 kilograms of drugs, numerous firearms, ammunition, cash, digital scales, vacuum sealers
10 and other evidence of drug trafficking. That morning, agents located Reyes-Garcia,
11 Contreras Ibarra, and Jorge Contreras together at an apartment complex in Las Vegas,
12 Nevada. Serrano was arrested at the Nookachamps Residence, discussed below.

13 During the search of the Yakima Residence (1580 E Selah Road, Yakima,
14 Washington), agents discovered an area used for processing and packaging marijuana for
15 distribution, to include drying racks, fans, vacuum seal bags, and a large quantity of
16 illegal marijuana in various stages of processing. Also recovered were five firearms,
17 specifically, two semiautomatic handguns, one revolver, and two rifles, along with
18 multiple boxes of various caliber ammunition. Agents further seized items of dominion
19 and control, including documentation belonging to Contreras Ibarra and his father, Jorge
20 Contreras.

21 At Contreras Ibarra's residence (6108 Westminster Lane, Pasco, Washington),
22 agents encountered and briefly questioned Contreras Ibarra's wife. Among other things,
23 they located and seized documentation related to the Yakima Residence and two
24 firearms, specifically, a Springfield XD 9mm semiautomatic pistol and a Browning Arms
25 9mm semiautomatic pistol, which was loaded. One gun had been reported stolen.

26 As noted above, Serrano was present at the Nookachamps Residence and was
27 arrested. During the search, investigators located and seized approximately 107 gross

1 grams of heroin, two digital scales, drug packaging, a vacuum sealer, two blenders,
2 multiple cell phones, and over \$3,500 of United States currency. Investigators also
3 seized two assault rifle magazines containing 13 rounds of Wolf 7.62x39mm ammunition
4 and 2 rounds of Tula 7.62x39mm ammunition, respectively. This conduct is charged as
5 Count 35 and 36.

6 During a post-*Miranda* interview on November 2, 2016, Serrano admitted to
7 picking up drugs from Marquez and Garcia Gutierrez but claimed that he had not done so
8 for several months ago and that he was no longer selling drugs because it was not paying
9 out like it did before.

10 Defendant Serrano was taken into custody and was arraigned on the Indictment on
11 November 3, 2016. The Court ordered Defendant released pending trial on bond
12 conditions. He was released to reside at 807 S. 27th Street Mount Vernon, Washington.

13 On November 18, 2016, Mount Vernon Police Officers were on routine patrol in
14 Mount Vernon, Washington. At approximately 11:00 a.m., officers observed an
15 unknown male walk out of the front door of 807 S. 27th Street, Mount Vernon,
16 Washington (Serrano's residence), and depart in a vehicle for which there was an active
17 warrant. Officers followed the individual and conducted a traffic stop. During the traffic
18 stop, officers located a Beretta .22 handgun, a baggie containing 4.5 grams of suspected
19 heroin, two rifle rounds, a scale, mushrooms, and two cell phones.

20 On November 22, 2016, agents executed a search warrant at Serrano's 807 S. 27th
21 Street residence. The only individuals present in the house were Serrano and co-
22 defendant Rigoberto Castellano Herrera, who similarly had been arrested but released on
23 pretrial bond. Agents located approximately one ounce of heroin, as confirmed by lab
24 testing, packaging materials, and a digital scale in the residence. Agents also located five
25 cellphones. This conduct is charged as Count 41.

26 During a post-*Miranda* statement on November 22, 2016, Serrano admitted
27 knowing the individual who had come to his house on November 18, 2016, and stated

1 that he used to sell heroin to him in the summer. Serrano also said that he used to have
2 connections but that he (Serrano) stopped selling drugs months ago.

3 **III. THE OFFENSES.**

4 As set forth above, all three Defendants are charged with *Conspiracy to Distribute*
5 *Controlled Substances* as well as with various substantive drug distribution and drug
6 possession offenses, which are alleged to be in furtherance of Count 1. Defendant
7 Serrano is also charged with felon in possession of ammunition.

8 **A. Conspiracy to Distribute Controlled Substances.**

9 To convict the Defendants of Count 1, the government must prove that: (1) there
10 was an agreement between two or more persons to manufacture or distribute controlled
11 substances; and (2) the defendants joined in the agreement knowing of its purpose and
12 intending to help accomplish that purpose. *See* Ninth Circuit Model Jury Instruction
13 § 9.19 (2010 Edition – approved 9/2015); *United States v. Penagos*, 823 F.2d 346, 348
14 (9th Cir. 1987), *modified by United States v. Shabani*, 513 U.S. 10 (1994). One becomes
15 a member of a conspiracy by willfully participating in the unlawful plan with the intent to
16 advance or further some object or purpose of the conspiracy, even though the person does
17 not have full knowledge of all the details of the conspiracy. *See* Ninth Circuit Model
18 Jury Instruction § 9.19. Proof of an overt act is not required for a conviction under the
19 drug conspiracy statute in 21 U.S.C. § 846. *Shabani*, 513 U.S. at 14-15 (“In order to
20 establish a violation of [the drug conspiracy statute], the Government need not prove the
21 commission of any overt acts in furtherance of the conspiracy.”).

22 **1. Agreement and Knowledge.**

23 The agreement to accomplish an illegal object need not be a formal agreement. It is
24 sufficient to show that the conspirators came to a mutual understanding to accomplish an
25 unlawful purpose. *American Tobacco Co. v. United States*, 328 U.S. 781, 809 10 (1946);
26 *United States v. Kiriki*, 756 F.2d 1449, 1453 55 (9th Cir. 1985). Indeed, the agreement “may
27

1 consist of nothing more than a tacit understanding.” *United States v. Mohr*, 728 F.2d 1132,
2 1135 (8th Cir. 1984).

3 An agreement constituting a conspiracy may be inferred from the acts of the
4 parties, *see United States v. Fulbright*, 105 F.3d 443, 448 (9th Cir. 1997), such as through
5 evidence of coordinated activity between the defendant and alleged co-conspirators.
6 *United States v. Hegwood*, 977 F.2d 492, 497 (9th Cir.1992), cert. denied, 508 U.S.
7 913(1993); *accord United States v. Hernandez*, 876 F.2d 774, 778 (9th Cir. 1989). Thus,
8 one means of proving a conspiracy is by showing that defendants acted together to
9 achieve a common goal. *United States v. Mesa-Farias*, 53 F.3d 258, 260 (9th Cir. 1995).
10 It is not necessary to show that each co-conspirator was aware of all of the details of the
11 conspiracy or of the parties involved. When one joins an illegal venture, one becomes
12 part of the scheme although he or she may know only of his or her own share of
13 wrongdoing. *Blumenthal v. United States*, 332 U.S. 539, 556-57 (1947); *Chavez v.*
14 *United States*, 275 F.2d 813, 817 (9th Cir. 1960). Indeed, “once a conspiracy exists,
15 evidence establishing beyond a reasonable doubt a defendant’s connection with the
16 conspiracy, even though the connection is slight, is sufficient to convict the defendant of
17 knowing participation in the conspiracy.” *United States v. Delgado*, 357 F.3d 1061, 1066
18 (9th Cir. 2004).

19 The government need not prove that a conspirator knew the identity, location,
20 number, and function of all his or her co-conspirators, or that all worked together
21 consciously to achieve a desired end. *United States v. Kearney*, 560 F.2d 1358, 1362 (9th
22 Cir. 1977), cert. denied, 434 F.2d 971 (1977). The hallmark of a conspiracy is concerted
23 activity. “The federal courts uniformly hold ... that government agents ... may testify as to
24 the general practices of criminals to establish the defendant’s modus operandi” in conspiracy
25 cases. *See United States v. Johnson*, 735 F.2d 1200, 1202 (9th Cir. 1984); *United States v.*
26 *Patterson*, 819 F.2d 1495, 1507 (9th Cir. 1977); *United States v. Andersson*, 813 F.2d 1450,
27 1458 (9th Cir. 1987) (testimony regarding trafficking methods and counter-surveillance).

2. Criminal Liability of Co-Conspirators.

Each member of the conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. *See Pinkerton v. United States*, 328 U.S. 640, 647-48 (1946). Stated another way, if one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime. Thus, one who joins an ongoing conspiracy is bound by all of the prior acts of co-conspirators taken in furtherance of the conspiracy. *See Ninth Circuit Model Jury Instruction § 8.25* (2010 Edition); *see also United States v. Traylor*, 656 F.2d 1326, 1337 (9th Cir. 1981). Similarly, a co-conspirator is also responsible for all reasonably foreseeable crimes committed in furtherance of the conspiracy, even if he or she did not participate in or have knowledge of their commission. *Pinkerton*, 328 U.S. at 647-48; *United States v. Alvarez-Valenzuela*, 231 F.3d 1198, 1202 (9th Cir. 2000). Accordingly, Defendant is accountable for all foreseeable crimes committed by his co-conspirators in furtherance of the conspiracy charged in Count 1.

3. Evidence of Conspiratorial Conduct.

A conspiracy may be proven from circumstantial evidence and may exist without the existence of a formal agreement. Indeed, conspiracy can rarely be proved by direct evidence in light of the clandestine nature of the offense and the resultant difficulty of direct proof. The elements may therefore be established by evidence of coordinated activities between the defendants. *United States v. Ortega*, 203 F.3d 675, 683 (9th Cir. 2000); *United States v. Kiriki*, 756 F.2d 1449, 1453 (9th Cir. 1985); *United States v. Becker*, 720 F.2d 1033, 1035 (9th Cir. 1983).

“The rule is well established that the government in a conspiracy case may submit proof on the full scope of the conspiracy; it is not limited in its proof to the overt acts alleged in the indictment.” *United States v. Rizk*, 660 F.3d 1125, 1131 (9th Cir. 2011); *accord United States v. Montgomery*, 384 F.3d 1050, 1061-62 (9th Cir. 2004) (acts that

1 occurred within the temporal scope of the conspiracy and were inextricably intertwined
2 with the conspiracy are not subject to Rule 404(b) analysis). Moreover, such inextricably
3 intertwined acts are considered direct evidence of the offense. *See United States v.*
4 *Ramirez-Jiminez*, 967 F.2d 1321, 1327 (9th Cir. 1992).

5 Here, in particular, the government will offer evidence of conduct by Defendants
6 Reyes Garcia and Contreras Ibarra that occurred in the Eastern District of Washington in
7 2015 and early 2016. The evidence shows that the conspiracy spanned multiple
8 jurisdictions, to include Eastern and Western Washington, and elsewhere. As the
9 evidence reveals, two of the co-defendants pending trial (and a third man identified as a
10 target who was not ultimately charged) conspired with one another and others to engage
11 in drug trafficking since at least since late 2015 and into early 2016, when they were
12 identified in Western Washington committing the same criminal conduct together, then
13 continued to engage in the same conspiratorial venture together until their arrests in
14 November 2016.

15 As the Court ruled on August 24, 2017, this evidence is admissible as inextricably
16 intertwined and therefore direct evidence of the offenses.⁴ *See United States v. Ramirez-*
17 *Jiminez*, 967 F.2d 1321, 1327 (9th Cir. 1992) (inextricably intertwined evidence is
18 “‘direct evidence,’ used to flesh out the circumstances surrounding the crime with which
19 the defendant has been charged, thereby allowing the jury to make sense of the testimony
20 in its proper context”); *United States v. Williams*, 989 F.2d 1061, 1070 (9th Cir. 1993)
21 (testimony about uncharged drug transactions was admissible as proof of the charged
22 drug conspiracy and provided necessary context for the witness’ testimony about the
23 alleged conspiracy conduct).

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27
28 ⁴ See Transcript of August 24, 2017 Pre-Trial Hearing at pp 12-14.
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B. Distribution of Controlled Substances.

As set forth above, the Defendants are charged with multiple counts of distribution of controlled substances, based on controlled purchases made by CS1 and UC1⁵. The elements are (1) the defendant knowingly distributed methamphetamine, and (2) the defendant knew it was methamphetamine or some other prohibited drug. *See Ninth Circuit Model Jury Instruction No. 9.18*. The government will call CS1 and UC1 as witnesses, as well as law enforcement officers and cooperating witness(es). The government also may introduce recordings for some of the buys, consensually recorded calls/texts setting up some of the deals, toll records, surveillance photographs, and of course the purchased controlled substances.

C. Possession with Intent to Distribute.

Defendant Serrano is also charged with two counts of possession of controlled substances with intent to distribute, based on heroin found at his two residences on November 2 and 22, 2016.

To convict Defendant of this crime, the United States must prove beyond a reasonable doubt that: (1) Defendant knowingly possessed a controlled substance (here, heroin); and (2) he possessed it with the intent to deliver it to another person. To “possess with intent to distribute” means to possess with intent to deliver or transfer possession of a controlled substance to another person, with or without any financial interest in the transaction. *See Ninth Circuit Model Jury Instruction 9.15*.

D. Drug Quantity Proof.

To trigger the increased penalty enhancements in Section 841(b)(1) corresponding to certain drug quantities, the government must prove beyond a reasonable doubt the amount of controlled substances involved in particular offenses. *See Alleyne v. United*

⁵ The government intends to dismiss Count 8, charging Serrano Carreno with distribution of methamphetamine on June 22, 2016.

1 *States*, 133 S. Ct. 2151, 2155 (2013); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000);
 2 *United States v. Velasco Heredia*, 319 F.3d 1080, 1086 (9th Cir. 2003) (stating that after
 3 *Apprendi*, the statutory mandatory minimum sentences under 21 U.S.C. § 841 do not
 4 apply “until the jury, or the court in a bench trial, finds beyond a reasonable doubt [] the
 5 quantity involved in the violation.”).

6 Conspiratorial liability for drug quantity differs somewhat from liability in a
 7 substantive count. A member of a conspiracy is responsible both for drug quantities
 8 involved in his own activities or those activities he encouraged others to undertake as
 9 with a substantive count, as well as for drug quantities involved in co-conspirators’
 10 activities to the extent that such quantities were “reasonably foreseeable” to him. *United*
 11 *States v. Banuelos*, 322 F.3d 700, 705 (9th Cir. 2003). In both contexts, the government
 12 does not have to prove that the defendant knew the exact quantity of drugs. *See Ninth*
 13 *Circuit Model Jury Instruction* § 9.16 (2010 Edition). Accordingly, the government will
 14 provide the Court with special verdict questions for the jury to determine the quantities
 15 involved in the different drug counts that allege a mandatory minimum sentence.

16 **E. Felon in Possession of Ammunition.**

17 Defendant Serrano is also charged in Count 36 with being a felon in possession of
 18 ammunition, in violation of 18 U.S.C. § 922(g)(1). To convict Defendant of these
 19 charges, the government must prove (1) that defendant possessed the ammunition in
 20 question; (2) that the ammunition had been shipped or transported in interstate or foreign
 21 commerce, and (3) that at the time the defendant possessed the ammunition, defendant
 22 had been convicted of a crime punishable by imprisonment for a term exceeding one
 23 year. *Ninth Circuit Model Jury Instruction* 8.65A.

24 The government is prepared to prove that Serrano has multiple prior felony
 25 convictions. The United States has prepared several proposed stipulations for the
 26 defendants’ consideration, including regarding Serrano’s felony status. Serrano, through
 27 counsel, has indicated that he is prepared to stipulate to a prior felony.

The government is also prepared to prove, via the testimony of a specially trained ATF Special Agent, that the ammunition was in fact shipped or transported in interstate or foreign commerce if the defense is not prepared to so stipulate. The government's burden on the interstate nexus element is very slight. The government is required to prove only that the firearm traveled in interstate or foreign commerce at some point in time. *Scarborough v. United States*, 431 U.S. 563, 575 n.11 (1977). The shipment or transportation in interstate commerce need not be recent. *United States v. Casterline*, 103 F.3d 76, 77 (9th Cir. 1996). Testimony that a firearm is not manufactured in the state where the defendant possessed it is sufficient to meet the government's burden. *United States v. Alvarez*, 972 F.2d 1000, 1002 (9th Cir. 1992).

The government need not establish that Defendant Serrano owned the ammunition, only that he possessed it. *United States v. Casterline*, 103 F.3d 76, 78 (9th Cir. 1996). "The element of possession may be satisfied by proof of constructive or joint possession. To establish constructive possession, the government must produce evidence showing ownership, dominion, or control over the contraband itself or the premises or vehicle in which contraband is concealed." *United States v. Shirley*, 884 F.2d 1130, 1134 (9th Cir. 1989) (internal citations and quotation marks omitted).

IV. ANTICIPATED EVIDENTIARY ISSUES.

A. Body Wires and Intercepted Phone Calls and Texts.

Some of the government's evidence will come in via consensually recordings and intercepted phone communications (e.g., wiretaps). Some of the recordings are in English, some in Spanish, and some are a mixture of both languages.

The overwhelming majority of the intercepted calls and meetings are quite audible. However, any complaints of inaudibility are addressed to the sound discretion of the Court. *See United States v. Fuentes Montijo*, 68 F.3d 352 (9th Cir. 1995).

Recordings that are partially unintelligible are admissible, unless those portions are so

substantial as to render the recordings as a whole untrustworthy. *United States v. Llinas*, 603 F.2d 506 (5th Cir. 1979); *United States v. Tisor*, 96 F.3d 370, 376 (9th Cir. 1996).

The government has prepared transcripts of all of the recorded calls it intends to use at trial. Drafts of the transcripts have been provided to defense counsel, and the final versions will be provided in the government's exhibit notebooks. Complaints or objections regarding the accuracy of transcripts go to weight not admissibility.

1. English Language Recordings and Texts.

As to the English language recordings, the Ninth Circuit approves the use of transcripts of properly admitted recordings to aid the jury in understanding the recordings. *United States v. Rinn*, 586 F.2d 113 (9th Cir. 1978); *United States v. Taghipour*, 964 F.2d 908 (9th Cir. 1992); *United States v. Pena Espinoza*, 47 F.3d 356 (9th Cir. 1995); *United States v. Armijo*, 5 F.3d 1229 (9th Cir. 1993). The Ninth Circuit also has approved of the use of transcripts during deliberations, under certain circumstances. *United States v. Turner*, 528 F.2d 143, 168 (9th Cir. 1975); *United States v. Fuentes Montijo*, 68 F.3d 352, 353 55 (9th Cir. 1995).

As to the English language recordings, the jury should be instructed that the recordings themselves are the evidence, and the transcripts are only a guide. *United States v. Turner*, 528 F.2d 143, 167 68 (9th Cir. 1975). The standard rule for resolving disputes between an audiotape and a transcript is for the jury to refer to the tape as evidence and not the transcript.

2. Spanish Language Calls and Texts.

The law is reversed on the Spanish language recordings. When recordings are in a foreign language, the written English translations are admissible into evidence, rather than the recordings. *United States v. Rrapi*, 175 F.3d 742, 746 (9th Cir.1999); *United States v. Fuentes Montijo*, 68 F.3d at 355 56. In such circumstances, the translations substitute for the actual recordings. *Id.* The government has retained an experienced

1 Spanish linguist to prepare the translations, and she has been disclosed as an expert to the
2 defense.

3 **3. Proposed Method of Introducing Recordings.**

4 As to the recordings made by a CS or UC1, the government intends to introduce
5 the recordings through the case agent who handled the CS, through the CS himself, and
6 UC1, who were participants in the recorded conversations and have first-hand knowledge
7 of their contents. The calls themselves are admissible as statements in furtherance of the
8 conspiracy (as to others captured during the recordings).

9 For the wiretap calls, which are a mix of English and Spanish, (and sometimes
10 both in the same recording) the government intends to introduce them through the case
11 agent, DEA Special Agent Benjamin Gerrol, who worked in the wire room and is familiar
12 with how the interceptions were made. As to the calls that are exclusively or mostly in
13 the English language, the government proposes to play the recording, and then have the
14 jury follow along with the transcript. As to the calls that are exclusively or mostly
15 Spanish, the defense has indicated they will not stipulate to the accuracy of the
16 translations; accordingly, the government will also call the interpreter who prepared the
17 translations to testify as to their preparation. For these calls, the government intends to
18 read the English translations of the Spanish language calls to the jury, while the jurors
19 follow along in the transcripts, in lieu of playing the actual audio recordings themselves.
20 With the Court's permission, the government will have the agents or law students read
21 the transcripts into the record. The government is aware that this procedure has been
22 employed in several trials in this District, which have involved wiretap conversations in
23 foreign languages.

24 **4. Voice Attribution.**

25 The government prepared transcripts that indicate who the speakers are in the
26 recorded conversations. The government's voice attribution evidence will consist of one
27 or more of the following: (1) testimony of cooperating witnesses who were parties to the

1 calls and who can identify the other person on the call from personal knowledge; (2)
2 investigator observations that substantiate who was the user of a particular telephone
3 number (e.g., GPS and/or toll data for a phone, agents observed an individual using the
4 phone, the phone was later seized and/or searched); and (3) testimony from agents or
5 cooperating witnesses familiar with the voices on the recordings.

6 **B. Admissibility of Defendant's Own Statements.**

7 The United States also intends to introduce various statements made by these
8 defendants. These statements include statements made to the confidential sources or to
9 others in the vicinity of the confidential sources, during the wiretap, and to testifying co-
10 conspirators. The government also intends to offer post-*Miranda* statements made by
11 defendant Serrano at the time of his two arrests. Statements by a defendant are not
12 hearsay when offered by the government against the speaker. Fed. R. Evid. 801(d)(2).

13 However, the converse is not true. An out-of-court statement of a declarant
14 offered by the declarant on his own behalf (or by a co-defendant) is inadmissible hearsay
15 because, among other things, it is not a statement by a party-opponent. *See United States*
16 *v. Ortega*, 203 F.3d 675, 682 (9th Cir. 2000); *see also Williamson v. United States*, 512
17 U.S. 594, 600 (1994) (the hearsay rule excludes self-exculpatory statements because such
18 statements "are exactly the ones which people are most likely to make even when they
19 are false").

20 As to Serrano, the evidence will show that during a post-*Miranda* interview on
21 November 2, 2016, he admitted to picking up drugs from Marquez and Garcia Gutierrez
22 several months ago, but claimed that he was no longer selling drugs because it was not
23 paying out like it did before. During a post-*Miranda* statement on November 22, 2016,
24 Serrano stated that he used to sell heroin in the summer to the individual who had come
25 to his house on November 18, 2016, and that he used to have connections but that he
26 (Serrano) stopped selling drugs months ago. The defense has not moved to suppress
27 either of these statements, and there has been no allegation that he did not understand his

rights, or that his statements were involuntary. Accordingly, those admissions are admissible.

C. Admissibility of Co-Conspirator Statements.

The government will also seek to introduce other recorded calls intercepted during the wiretap. These communications are admissible as co-conspirator statements in furtherance of the conspiracy pursuant to FRE 801(d)(2)(E). In addition, statements made by one co-conspirator to another are also admissible.

Under Evidence Rule 801(d)(2)(E), a statement made by a co-conspirator is admissible if the government establishes by a preponderance of the evidence: 1) the existence of a conspiracy; 2) the defendant's connection to it, and 3) that the statement was made during and in furtherance of the conspiracy. *Bourjailly v. United States*, 483 U.S. 171, 175 (1987); *United States v. Fleishman*, 684 F.2d 1329, 1337 (9th Cir. 1982). The statements themselves may help establish their admissibility and reliability under 801(d)(2)(E). *See Bourjailly*, 483 U.S. at 175; *see also United States v. Schmit*, 881 F.2d 608 (9th Cir. 1989).

There must be some evidence, aside from the proffered statements, of the existence of the conspiracy and the defendant's involvement. *United States v. Gordon*, 844 F.2d 1397, 1402 (9th Cir. 1988). Circumstantial evidence is sufficient. *See e.g., United States v. Mason*, 658 F.2d 1263, 1269 (evidence that defendant visited coconspirator's residence just prior to time coconspirator advised he had drugs was sufficient to connect defendant to the conspiracy).

To satisfy the "furtherance" requirement, the statement must be said to "'further the common objectives of the conspiracy,' or, 'set in motion transactions that [are] an integral part of the [conspiracy].'" *United States v. Layton*, 720 F.2d 548, 555 (9th Cir. 1983). Examples of "in furtherance" include statements that keep a conspirator abreast, *United States v. Andersson*, 813 F.2d 1450, 1456 (9th Cir. 1987); induce continued participation, *United States v. Eaglin*, 571 F.2d 1069, 1083 (9th Cir. 1977); allay fears,

1 *United States v. Layton*, 720 F.2d 548, 557 (9th Cir. 1983); explain co-conspirators'
 2 roles, *United States v. Moody*, 778 F.2d 1380, 1382-83 (9th Cir. 1985), *amended by* 791
 3 F.2d 707 (9th Cir. 1986); or aim to avoid detection, *United States v. Sears*, 663 F.2d 896,
 4 905 (9th Cir. 1981). The focus is on the declarant's intent in making the statement, not
 5 on its actual effect of promoting the goals of the conspiracy. *United States v. Zavala*
 6 *Serra*, 853 F.2d at 1516; *United States v. Layton*, 720 F.2d 548, 557 n.5 (9th Cir. 1983).

7 Additionally, it is not necessary that the statement be made to another member of
 8 the conspiracy for it to come under Rule 801(d)(2)(E). *See Zavala Serra*, 853 F.2d at
 9 1516 (statements to government informant); *United States v. Taylor*, 802 F.2d 1108, 1117
 10 (9th Cir. 1986) (statements to undercover FBI agent); *United States v. Echeverry*, 759
 11 F.2d 1451, 1457 (9th Cir. 1985) (statements to undercover DEA agent); *United States v.*
 12 *Smith*, 623 F.2d 627, 631 (9th Cir. 1980) (statement to informant).

13 The order of proof is left to the discretion of the Court such that a co-conspirator's
 14 statements may be admitted subject to being struck for failure of independent proof of the
 15 existence of the conspiracy and the defendant's connection to it. *United States v. Perez*,
 16 658 F.2d 654, 658 59 (9th Cir. 1981).

17 Here, the government anticipates seeking to admit conversations between the
 18 confidential source(s)/UC1 and defendants, and between the confidential sources/UC1
 19 and other members of the conspiracy, to include persons who have entered guilty pleas,
 20 as well as between members of the charged conspiracy. Virtually all involve, as one or
 21 both parties to the call or text, defendants who have, in fact, plead guilty to that same
 22 conspiracy. There can be no good faith argument that they are not (at least for purposes
 23 of deciding the threshold question of admissibility) calls/conversations between
 24 conspirators, or that they were not in furtherance of the conspiracy.

25 Finally, the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36, 56
 26 (2004), has no effect on the admissibility of statements by co-conspirators in furtherance
 27 of a conspiracy. Specifically, the Supreme Court found that the statements of co-

1 conspirators are not made in with the expectation that they will be used at trial, and
 2 therefore there is no Sixth Amendment violation by an inability of the defendant to cross
 3 examine the co-conspirators who made the statements. *Id.* See also *United States v.*
 4 *Larson*, 460 F.3d 1200, 1213 (9th Cir. 2006) (Ninth Circuit recognizing that the
 5 admission of co-conspirator statements do not violate the Sixth Amendment).

6 **D. Other Out-of-Court Statements Offered for Non-Hearsay Purposes.**

7 “Hearsay is a statement, other than one made by the declarant while testifying at
 8 the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Fed. R.
 9 Evid. 801(c). The admission of hearsay into evidence is generally proscribed by Rule
 10 802. When it is relevant that an out of court statement was made, however, and the
 11 statement is offered exclusively to prove that it was made, it is not hearsay and is
 12 therefore admissible. See *Williams v. United States*, 458 U.S. 279 (1982). That is
 13 because statements not offered for their truth are not hearsay. Fed. R. Evid. 801(c).

14 In certain instances, the government may offer out-of-court statements not to
 15 prove the truth of the matters asserted, but merely to explain information possessed by,
 16 and the subsequent actions of, the investigative agents, law enforcement officers, and
 17 other witnesses. Furthermore, additional out-of-court statements provide necessary
 18 context in order to comprehend the admissible statements of Defendant and his co-
 19 conspirators. Because these statements will not be offered for the truth of the matter
 20 asserted, the statements would not constitute hearsay as defined by Rule 801(c). See
 21 *United States v. Mitchell*, 502 F.3d 931, 969 (9th Cir. 2007) (no error in allowing
 22 investigator testify about out-of-court statements from an informant that caused him to go
 23 to a certain location); *United States v. Munoz*, 233 F.3d 1117, 1134 (9th Cir. 2000) (no
 24 error in allowing attorney to testify about out-of-court conversations with Michigan State
 25 investigators that caused him to send letter requesting that investment company sales
 26 personnel suspend investment sales); *United States v. Brown*, 923 F.2d 109, 111 (8th Cir.

1 1991) (out-of-court statement is not hearsay if offered for the limited purpose of
2 explaining why a police investigation was undertaken).

3 **E. Business and Governmental Records.**

4 The government intends to offer into evidence business records from various
5 sources (primarily phone toll and subscriber information, as well as hotel records). The
6 business record exception allows a record to be admitted if it is made at or near the time
7 of the events set forth therein, by a person with knowledge, and is kept in the course of
8 regularly conducted business activity, if it is the regular practice of the business to make
9 the record. Fed. R. Evid. 803(6). Any person familiar with the business record keeping
10 practices of the business who can identify the record at issue as having been made in the
11 ordinary course of business is a sufficient foundational witness. Personal knowledge of
12 the document is not required, and does not affect its admissibility. *United States v.*
13 *Pitman*, 475 F.2d 1335, 1337 (9th Cir. 1973); *see United States v. Childs*, 5 F.3d 1328,
14 1334 (9th Cir. 1993) (the phrase “other qualified witness” is broadly interpreted to
15 require “only that the witness understand the record-keeping system” at the particular
16 business). Similarly, a record generated by a third party and received and relied upon in
17 the ordinary course, such as an invoice, becomes a business record of the company
18 relying upon it. *Id.* at 1333-34; *see United States v. Jawara*, 474 F.3d 565, 585 (9th Cir.
19 2007) (“[W]e would have no trouble concluding that a college in the United States was a
20 proper custodian of its students’ SAT results, even though the SAT results were actually
21 prepared by another entity”). Incompleteness, ambiguities, and inaccuracies in records
22 go to the weight to be given the evidence, not to its admissibility. *United States v.*
23 *Catabran*, 836 F.2d 453, 458 (9th Cir. 1988).

24 Here, copies of the records and custodian certifications have been provided
25 through discovery. No objection having been received, the records are admissible under
26 902(11) of the Federal Rules of Evidence.

F. Physical Evidence Seized.

The United States will introduce at trial physical evidence seized over the course of the investigation, including, but not limited to, evidence seized during traffic stops and from the various search warrants executed during this investigation. The government will be calling searching and seizing officers to authenticate these items, along with others who observed these items during the execution of the various search warrants. In some instances, the government will introduce photographs of the physical items in lieu of the items themselves. The government will call agents who will testify that the photographs are true and accurate depictions of the condition of the items at the time they were seized.

G. Recalling Law Enforcement Witnesses and Interrupting Witnesses.

The government requests leave of Court to re-call several law enforcement witnesses during the course of the trial. First, the government may call the case agents (DEA Special Agents Benjamin Gerrol and Joseph Cheng) to the stand on multiple occasions to introduce wiretap recordings, surveillance, and other topics. In addition, the government requests permission to re-call certain law enforcement officers who participated in multiple days of surveillance and/or in searches of various locations. This procedure will allow for the orderly and chronological presentation of evidence to the jury. Requiring each agent to testify once regarding all of the days he/she participated in the investigation would be extremely confusing for the jury. The government will, of course, attempt to limit the extent to which it is necessary to recall witnesses. In any event, we do not foresee any potential for prejudice to the defendants through this procedure. Further, the government may need to interrupt the testimony of a witness in order for another witness to testify. Several of the government's witnesses are travelling from out of state and will need to testify at certain times in order to meet travel requirements. Again, the government will seek to minimize interruptions in testimony to the extent possible.

H. Admissibility of Evidence Regarding Dominion and Control

The government expects to offer certain documents seized from the residences searched in this matter where narcotics and/or weapons were found. These documents are directly relevant to dominion and control of certain locations in the residences and of the residences themselves. The documents include passports and registration documents that reflect Defendants' Mexican citizenship. It should be noted that the fact of Mexican citizenship does not implicate a lack of United States citizenship nor a lack of legal status to be present in the United States. As set forth in the government's response to Defendant Baltazar Reyes Garcia's Motions in Limine, the government does not intend to elicit testimony with regard to immigration status in its case in chief unless the defense opens the door to such topics through questioning or argument, Dkt. #455 at p. 3.

I. Admissibility of Photographs and Diagrams.

The government expects to offer photographs of the various locations associated with the various drug transactions and/or searches, as well maps and diagrams (not necessarily to scale) of the locations. The photos and diagrams are admissible. *See United States v. Brannon*, 616 F.2d 413, 416 (9th Cir. 1980) (evidence that photographs accurately depict scene provides a sufficient foundation for admission under FRE 901(a)).

J. Admissibility of Summary Charts.

The investigation and prosecution of this case has involved extensive review of voluminous telephone and GPS records. It also involved the seizure and analysis of numerous drug exhibits. Accordingly, the government may present evidence through Case Agents Benjamin Gerrol and Joseph Cheng in the form of summary testimony and charts. The government has provided the defense with all the underlying materials, and will provide drafts of each of these summary charts.

Federal Rule of Evidence 1006 states that: “[t]he proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot conveniently be examined in court.” The proponent of a summary under Rule 1006 must establish that the underlying materials cannot be conveniently examined in court, and that they are admissible at trial, as conditions precedent to introduction of the summary into evidence. *Amarelu v. Connell*, 102 F.3d 1494, 1516 (9th Cir. 1997); *United States v. Meyers*, 847 F.2d 1408, 1412 (9th Cir. 1988); *United States v. Johnson*, 594 F.2d 1253, 1257 (9th Cir. 1979). The proponent of a summary also must establish that the underlying documents were made available to the opposing party for inspection. *Paddack v. Dave Christensen, Inc.*, 745 F.2d 1254, 1259 (9th Cir. 1984). Summaries must fairly represent the underlying documents, and their admission into evidence is left to the trial court’s discretion. *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1516 (9th Cir. 1985), superseded on other grounds by *Northrup Corp. v. Triad Intern. Mktg., SA*, 842 F.2d 1154 (9th Cir. 1988).

All of these requirements are met in this case. If the government were to publish all of the relevant telephone records and GPS reports, the jury would be faced with reviewing thousands of pages of documents. The government has provided the defense with copies of all of the underlying records. The summary testimony and charts are accurate and non-prejudicial.

Rule 1006 does not require that it literally be impossible for the fact finder to examine the underlying records before a summary may be admitted. *United States v. Stephens*, 779 F.2d 232, 238-39 (5th Cir. 1985); *United States v. Scales*, 594 F.2d 558, 562 (6th Cir. 1979). Rule 1006 contemplates that summaries of voluminous records may be used without introducing each and every underlying document into evidence. *Scales*, 594 F.2d at 562. Furthermore, the fact that some of the underlying documents are already in evidence does not mean that they can be “conveniently examined in court.” *United*

1 *States v. Stephens*, 779 F.2d at 239; *United States v. Lemire*, 720 F.2d 1327, 1347 (D.C.
2 Cir. 1983).

3 The Ninth Circuit has affirmed the admission as substantive evidence of a wide
4 variety of summary charts pursuant to Rule 1006 where (as in this case) such charts are
5 based on the sponsoring witnesses' out-of-court review of voluminous evidence. *See*,
6 *e.g.*, *United States v. Shirley*, 884 F.2d 1130, 1133 (9th Cir. 1989) (DEA agent presented
7 chart summarizing information about telephone calls made to and from phones associated
8 with defendants, relying on review of phone records, rental records, jail records, and
9 other information); *United States v. Meyers*, 847 F.2d 1408, 1412 (9th Cir. 1988) (chart
10 summarizing phone records and law enforcement surveillance reports); *United States v.*
11 *Catabran*, 836 F.2d 453, 456-458 (9th Cir. 1988) (charts summarizing voluminous
12 computer printouts and inventory records in bankruptcy fraud prosecution); *United States*
13 *v. Gardner*, 611 F.2d 770, 776 (9th Cir. 1980) (IRS agent presented chart summarizing
14 assets, liabilities, and expenditures of defendant in tax prosecution).

15 Under the cited authority, the government respectfully requests that these
16 summaries and charts be ruled substantively admissible.

17 **K. Expert Witnesses.**

18 The United States is prepared to call several experts, and has provided notice to
19 the defense of their identity and the subject matter of their testimony. Under Federal
20 Rule of Evidence 702, "[i]f scientific, technical, or other specialized knowledge will
21 assist the trier of fact to understand the evidence or to determine a fact in issue, a witness
22 qualified as an expert by knowledge, skill, experience, training, or education, may testify
23 thereto." Expert testimony must be both (1) relevant, that is, it must have a valid
24 connection to the pertinent inquiry at trial, and (2) reliable, that is, it must be trustworthy.
25 Each of the government's proposed expert witnesses are experts in their respective
26 chosen fields, and the government submits that their testimony will meet the reliability
27 requirements set forth in Daubert.

1 The United States intends to call the Spanish interpreter to testify as to her work
2 translating and preparing the call transcripts and text messages the government intends to
3 introduce at trial.

4 The United States also intends to call specially trained fingerprint examiners,
5 Ashley Leon and Michael Hall to discuss their analysis and findings.

6 As noted above, the government is prepared to call ATF Special Agent David
7 Roberts to testify as to the interstate “nexus” of the ammunition involved in the felon in
8 possession counts.

9 The United States may call a DEA Forensic Chemist to testify generally about the
10 science, technology and procedures for drug analysis.

11 Lastly, the government is prepared to call DEA Special Agent Errin Jewell to
12 testify as an expert on drug trafficking subjects. Special Agent Jewell has testified as
13 experts in other federal criminal trials.

14 “Courts have overwhelmingly found police officers’ expert testimony admissible
15 where it will aid the jury’s understanding of an area, such as drug dealing, not within the
16 experience of the average juror.” *United States v. Thomas*, 74 F.3d 676, 682 (6th Cir.
17 1996). The Ninth Circuit has explained the basis for such expert testimony as follows:

18 We have held that drug-enforcement experts may testify that a defendant’s
19 activities were consistent with a common criminal *modus operandi*. This
20 testimony helps the jury to understand complex criminal activities, and
21 alerts it to the possibility that combinations of seemingly innocuous events
22 may indicate criminal behavior. Further we even allow *modus operandi*
23 expert testimony in cases that are not “complex.”

24 *United States v. Webb*, 115 F.3d 711, 713-14 (9th Cir. 1997) (*citing United States v.*
25 *Johnson*, 735 F.2d 1200, 1202 (9th Cir. 1984) (“[G]overnment agents or similar persons
26 may testify as to the general practices of criminals to establish the defendants’ *modus*
27 *operandi*.”); *United States v. Gill*, 58 F.3d 1414, 1422 (9th Cir. 1995) (rejecting

1 contention that modus operandi testimony was improper because the activities described
2 were not “complex ones requiring expert explanation”).

3 These witnesses will testify, based on their experiences, that the amount of drugs
4 involved in the conspiracy, and also possessed by defendants, are consistent with a
5 trafficking offense (as opposed to mere possession for personal use), based on all of the
6 facts and circumstances. They will provide other background information, including the
7 following:

8 1. The wholesale and street value of the drugs seized during the investigation.
9 It is well established that drug agents and officers are permitted to testify concerning the
10 value of narcotics. *United States v. Campos*, 217 F.3d 707, 718 19 (9th Cir. 2000);
11 *United States v. Golden*, 532 F.2d 1244 (9th Cir. 1976). Among other things, such
12 testimony is highly relevant to the intent to distribute.

13 2. The process by which drugs are prepared for distribution, including the
14 “cutting,” weighing and packaging of drugs, and methods for transporting drugs.

15 3. Drug trafficking organizations, their methods of operation, and common
16 paraphernalia and indicia of trafficking activity.

17 4. Drug terminology for various kinds of drugs, such as cocaine, heroin and
18 methamphetamine, including but not limited to the slang terms for different quantities of
19 drugs. *See, United States v. Plunk*, 153 F.3d 1011, 1017 (9th Cir. 1998), *overruled on*
20 *other grounds, United States v. Hankey*, 203 F.3d 1160, 1169, n.7 (9th Cir. 2000)
21 (holding that “the jargon of the narcotics trade and the codes that drug dealers often use .
22 . . [are] proper subjects of expert opinion,” and ruling that District Court properly
23 qualified detective with extensive experience in narcotics investigations as an expert on
24 that subject).

25 In addition, the government anticipates eliciting some of this same information
26 through the testimony of cooperating defendants. While the government will not seek to
27 introduce “expert” testimony through these witnesses as such, the cooperating defendants

1 have personal knowledge on many of these same topics. They know, from personally
 2 knowledge, the slang/codes used by their co-conspirators, where the drugs came from,
 3 what a dealer versus use quantity is for these substances, how the drugs are cut and
 4 prepared and the prices charged for various quantities of these controlled substances.

5 **L. Admission of a Cooperating Defendant's Guilty Plea.**

6 The admissibility of a co-defendant's guilty plea depends upon the purpose for
 7 which it is offered. *United States v. Smith*, 790 F.2d 789, 793 (9th Cir. 1986). Evidence
 8 of a testifying co-defendant's guilty plea may be elicited on the issue of the witness's
 9 credibility, *United States v. Halbert*, 640 F.2d 1000, 1004 (9th Cir. 1981) (per curiam), or
 10 "to support the reasonableness of the witness' claim to firsthand knowledge because of
 11 admitted participation in the very conduct which is relevant," *United States v. Rewald*,
 12 889 F.2d 836, 865 (9th Cir. 1989). A co-defendant's guilty plea may not be offered as
 13 substantive evidence of the defendant's guilt, and the government will not do so in this
 14 case. However, a co-defendant's guilty plea, and in particular its detailed terms also
 15 should not be used to suggest to the jury these defendant's own potential penalty if he
 16 should be convicted. "It has long been the law that it is inappropriate for a jury to
 17 consider or be informed of the consequences of their verdict." *United States v. Frank*,
 18 956 F.2d 872, 879 (9th Cir. 1992); *see also Rogers v. United States*, 422 U.S. 35, 40
 19 (1975) (jury should have been admonished that it "had no sentencing function and should
 20 reach its verdict without regard to what sentence might be imposed"); *United States v.*
 21 *Reed*, 726 F.2d 570, 579 (9th Cir. 1984) (trial judge properly instructed jury that the
 22 "punishment provided by law for the offenses charged in the indictment are matters
 23 exclusively within the province of the court. It should never be considered by the jury in
 24 any way in arriving at an impartial verdict as to the guilt or innocence of the accused").
 25 Information about penalties draws the attention of the jury away from its chief function as
 26 the trier-of-fact, opens the door to compromise verdicts, and confuses the issues to be
 27 decided. *United States v. Olano*, 62 F.3d 1180, 1202 (9th Cir. 1995).

V. CONCLUSION.

The United States is not aware of other legal issues that are likely to arise during the course of this trial. If other issues do arise, the government requests the opportunity to address those issues by way of a supplemental brief or briefs.

DATED: this 18th day of September, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

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